

Economic and Management Consultants

May 23, 2005

**VIA HAND DELIVERY**

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W., 7th Floor  
Washington, DC 20423-0001

Re: BP Amoco Chemical Company v. Norfolk Southern Railway Company,  
Docket NOR 42093.

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Dear Mr. Williams:

Enclosed is a replacement public version of the formal small-shipment rate Complaint filed on May 20, 2005, on behalf of BP Amoco Chemical Company ("BP") against Norfolk Southern Railway Company ("NS").

BP believes that there is no inherent obligation to treat any of the information in this filing as Highly Confidential. However, as a courtesy to the NS and to facilitate a mediated solution we filed a Highly Confidential Version and a Public Version of this formal small-shipment rate Complaint. Please use this replacement public version instead of the public version filed on May 20. We have served this replacement public version today by email and Federal Express to Norfolk Southern Railway Company.

The Highly Confidential Version is intended for use by the Board and the Norfolk Southern Railway Company. The Public Version is intended for posting on the STB website and other distribution.

Enclosed is an original and ten copies of the replacement public version, along with a computerized .pdf copy.

Respectfully submitted,



Tom O'Connor  
Vice President

Economic and Management Consultants

**Certificate of Service**

I hereby certify that on this 23<sup>rd</sup> day of May 2005, I caused copies of the replacement public version of the formal small-shipment rate Complaint to be served via First Class U.S. Mail or more expeditious method of delivery, upon:

Paul Moates  
Sidley Austin Brown & Wood LLP  
1501 K St NW  
Washington DC 20005

George Aspatore  
General Solicitor  
Norfolk Southern Railway Co.  
Three Commercial Place  
Norfolk, VA 23510-2191

Joseph C. Dimino  
Sr. General Counsel  
Norfolk Southern Railway Co.  
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Luis M. Sierra  
Vice President – PTA/NDC Americas  
BP  
150 West Warrenville Road  
Mail code – 605-2W  
Naperville, Illinois 60563-8460



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Tom O'Connor  
Vice President

Economic and Management Consultants

May 20, 2005

**VIA HAND DELIVERY**

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W., 7th Floor  
Washington, DC 20423-0001

Re: BP Amoco Chemical Company v. Norfolk Southern Railway Company,  
STB Ex Parte No.

Dear Mr. Williams:

Pursuant to 49 C.F.R. Part 1111, enclosed for filing is a formal small-shipment rate Complaint brought on behalf of BP Amoco Chemical Company ("BP") against Norfolk Southern Railway Company ("NS").

BP believes that there is no inherent obligation to treat any of the information in this filing as Highly Confidential. However, as a courtesy to the NS and to facilitate a mediated solution we are filing a Highly Confidential Version and a Public Version of this formal small-shipment rate Complaint.

The Highly Confidential Version is intended for use by the Board and the Norfolk Southern Railway Company. The Public Version is intended for posting on the STB website and other distribution.

Enclosed is an original and ten copies of each version, along with a computerized .pdf copy of each version.

Respectfully submitted,



Tom O'Connor  
Vice President

LEBOEUF, LAMB, GREENE & MACRAE  
L.L.P.

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May 20, 2005

VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W., 7th Floor  
Washington, DC 20423-0001

Re: BP Amoco Chemical Company v. Norfolk Southern Railway Company,  
STB Ex Parte No.

Dear Mr. Williams:

Pursuant to 49 C.F.R. Part 1111, enclosed for filing is a formal small-shipment rate Complaint brought on behalf of BP Amoco Chemical Company ("BP") against Norfolk Southern Railway Company ("NS"). The Complaint invokes the Board's Rate Guidelines - Non-Coal Proceedings in Ex Parte No. 347 (Sub-No. 2), 1 S.T.B. 1004 (1996), for proceedings in which the Board's "Constrained Market Pricing" Guidelines cannot be applied.

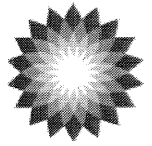
It would appear that NS may be attempting to charge BP an increase of [REDACTED] percent of the previous contract rate. The previous contract rate expired after April 30, 2005. BP cannot continue indefinitely to absorb such an increase, nor can it pass such an increase on to its customer without losing the business. Accordingly, pursuant to 49 U.S.C. 721(b)(4), BP hereby requests that NS be enjoined from charging more than [REDACTED], the rate level last offered BP (see attached letter from NS to BP, dated May 11, 2005), and which itself was a [REDACTED] increase over the prior rate level ([REDACTED] per car), until a mediated resolution or determination by the Board of this Complaint is issued.

Respectfully submitted,

*Michael F. McBride*  
Michael F. McBride

Attorney for BP Amoco Chemical Company

Enclosure



**BP**  
150 West Warrenville Road  
Mail code – 605-2W  
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**Luis M Sierra**  
Vice President and  
Performance Unit Leader  
PTA/NDC Americas  
Phone: 630-420-3735  
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May 20, 2005

The Honorable Roger Nober  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423

**Re: Formal Rate Complaint - BP Rail Shipments from Decatur to Kingsport**

Dear Chairman Nober,

I am writing to you on a matter of significant importance to BP. As you have heard from BP and others in our industry, without cost competitive supply chains, our ability to maintain and grow our chemical business in the United States is in jeopardy. The foundation of a cost competitive supply chain starts within our plants and extends out through the logistics networks we rely on to serve our customers.

It is for this reason that we are troubled by circumstances surrounding rail service to BP's Decatur, Alabama facility. This plant is captive to the Norfolk Southern railroad at origin and at our customer's destination in Kingsport, Tennessee. The rail freight rate we paid under the prior contract ending April 30, 2005 was unreasonable, this was made worse with a contract renewal proposal that would have increased that rate even further.

Both BP and the NS have invested significant effort on this matter. After months of dialogue, phone calls, teleconferences, emails, letters and even a visit to NS's most senior executives in Norfolk, Virginia, we have not reached a successful resolution to our rate dispute. To that end, I attach copies of the most recent correspondence between the NS and BP on this specific lane.

You will see from the correspondence that we are at an impasse and are no longer operating under a negotiated contract. At this time, we believe we have exhausted all traditional commercial options and therefore seek the Surface Transportation Board ("STB") to mediate a resolution of this rate dispute.

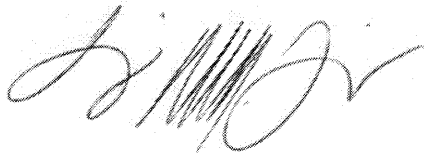
Time is of the essence, since the prior contract expired April 30<sup>th</sup>, the NS has raised our rate over [REDACTED] by moving us to a public tariff. BP cannot continue indefinitely to absorb such an increase, nor can it pass such an increase on to its customer without losing the business.

BP has not taken this action lightly. We rely on the attached analyses and expert opinion from our economic advisors in which they conclude the prior contract rate, the proposed renewal rate and the tariff rate are all unreasonable and that we should seek mediation from the STB to resolve this rate dispute. In addition and on advice of counsel, we also seek to enjoin the NS from increasing its rate above the amount most recently offered by them as referenced in its letter dated May 11, 2005.

Chairman Nober, I truly wish we had not reached this point but feel we have no other recourse than to file this formal rate Complaint. I trust, I hope that with the STB's intervention and the good faith efforts of all involved we can resolve this matter properly.

I look forward to further instruction on BP's next steps before the STB.

Sincerely,

A handwritten signature in dark ink, appearing to read "Luis M. Sierra", with a stylized flourish at the end.

**Luis M. Sierra**  
**Vice President - PTA/NDC Americas**  
**BP**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Formal Rate Complaint,  
Request for Mediation,  
And Verified Statement  
On Behalf of BP Amoco Chemical Company,  
Regarding Norfolk Southern  
Existing Rates and Proposed Rate Increases**

**TOM O'CONNOR**

**Vice President**

**Snavely King Majoros O'Connor & Lee, Inc.**

**1220 L Street, N.W.**

**Washington, D.C.**

**May 20, 2005**

**Verified Statement of Tom O'Connor**

**Formal Rate Complaint, Request for Mediation,  
And Verified Statement  
On Behalf of BP Amoco Chemical Company (BP)  
Regarding Norfolk Southern Existing Rates  
And Proposed Rate Increases**

**I. Introduction and Summary**

My name is Tom O'Connor. I am Vice president of Snavely King Majoros O'Connor & Lee, Inc. (Snavely King or SK). Snavely King is an economic and management consulting company focusing on transportation and utilities. Snavely King has been in business for more than 35 years, serving transportation clients including railroads, shippers and government agencies, in the United States, Canada and Europe. Appendix A contains my resume and a summary of my testimony before the Surface Transportation Board (STB), the Interstate Commerce Commission (ICC), as well as State Courts, Federal Courts and Arbitration and Mediation panels.

BP Amoco Chemical Company (BP) retained Snavely King to analyze the rail rates and costs on this lane and to present our findings to the Board. Snavely King has analyzed the lane and we have tested the rates, costs and revenue cost ratios (RCR) against benchmarks calculated by the STB.

**Summary Finding and Conclusion**

Our findings are that the rail rates we examined are unreasonably high. To resolve the rate issues which have brought negotiations to an impasse, and on behalf of BP, we are filing this formal rate complaint and request for mediation by the STB. This filing is made pursuant to 49 U.S.C. § 10701 (d), 49 C.F.R. Part 1111 and the Board's Rate Guidelines - Non-Coal Proceedings in Ex Parte 347 (Sub-No. 2).

**Analysis**

The specific lane which we analyzed is the small shipment lane from Decatur, Alabama to Kingsport, Tennessee. Norfolk Southern offers the only rail service connecting the BP origin facility in Decatur and the BP customer's destination

Verified Statement of Tom O'Connor



location in Kingsport, Tennessee. Due to various impediments, truck transportation is not economically feasible.

BP requests expedited review by the Surface Transportation Board (STB) of both the prior contract rates and the proposed rate increases recently announced by the Norfolk Southern Railroad (NSC). BP is an efficient and long-term customer of NS, shipping and receiving rail freight on commodities that support a wide range of industries. Rail service is essential to BP and rail service on this lane is available only from NSC.

One of the more important principles in negotiations is structuring the process to facilitate "win-win" outcomes. Unless both parties to a transaction perceive that the agreement is in their interest, its effectiveness is diminished, in some cases sharply diminished. BP has followed a win-win approach in its negotiations with Norfolk Southern including the negotiations regarding rail service on this small shipment lane from Decatur, Alabama to Kingsport, Tennessee.

We define small shipment lanes from a practical and commercial standpoint. Treatment as a small shipment lane is appropriate for any lane on which the requested rate reasonableness relief on that lane would generate a relatively small amount in rail revenue reductions.

The STB has a public policy mandate to "maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital".<sup>1</sup>

Decatur, Alabama to Kingsport, Tennessee is a small shipment lane. As summarized in the following tables, the lane meets the criteria for access to STB rate reasonableness assistance.

While our focus is the Decatur to Kingsport lane, in reaching our conclusions on this lane, we also reflect years of experience in similar analyses. We have conducted rail rate and cost analyses and benchmarking analyses for dozens of chemical and petrochemical companies. Overall, the BP rates and revenue cost ratios are among the highest we have found.

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<sup>1</sup> Source: 49 USC section 10101(6).

<b>Table I. Check List of Requirements For Securing STB Rate Reasonableness Assistance</b>	
<b>Under STB regulations, the reasonableness of a rate can not be challenged if any of the following test conditions hold:</b>	
<b>1. The revenues generated by that rate are less than the regulatory threshold which is a revenue cost ratio (RCR) of 180% or revenues equal to 180% of the variable costs associated with handling the traffic involved. See (49 U.S.C. 10707(d)(1)).</b>	
o The Decatur to Kingsport lane analyzed by SK meets this criterion. At the April 30, 2005 former contract rate levels, the RCR is ---% on a single carload shipment basis. The regulatory threshold RCR is 180%.	
o With a ---% rate increase the RCR would be ---% on a single carload shipment basis and ---% on a multiple carload basis. More recently NS has apparently proposed a rate increase -- times larger than---%. <sup>2</sup>	
<b>2. Under 49 U.S.C. 10709(c), the reasonableness of a contract rate cannot be challenged.</b>	
o The Decatur to Kingsport lane analyzed by SK meets this criterion as of April 30, 2005. The prior contract on the lane expired after April 30, 2005 and NS has declined to offer or accept a reasonable rate or contract as of the filing date of this statement.	
<b>3. Rates for traffic or services that are exempted from regulation pursuant to 49 U.S.C. 10502 or its predecessor (former 49 U.S.C. 10505) are free from challenge.</b>	
o The Decatur to Kingsport lane analyzed by SK meets this criterion.	
<b>4. The qualitative market dominance limitation of 49 U.S.C. 10707(a)-(b) rules out traffic with access to effective transportation competition.</b>	
o The Decatur to Kingsport lane meets this criterion. Effective transportation competition is available from neither rail nor truck.	
<b>5. Finally the grandfather provision of section 229 of the Staggers Act, which conferred regulatory immunity upon the rate levels that were in place at that time and not successfully challenged by a certain date.</b>	
o The Decatur to Kingsport lane analyzed by SK meets this criterion.	

<sup>2</sup> We have seen recent indications that NS has proposed a rate increase of ---%, more than -- times larger than the --% rate increase NS cited in its May 11 letter. We have analyzed the ---% rate increase but this ---% rate increase is so large that it is reasonable to question whether NS intended it. This is so not only because it is so large but also because NS had recently proposed a --% increase. Thus the ---% increase may have been due to a clerical or other error.

## **II. BP's Decatur to Kingsport Lane**

Beginning in March 2005, BP has consistently sought to negotiate a reasonable rate with NSC on the Decatur lane. This effort involved high level meetings between BP and NSC culminating in the letter shown as Attachment C. This letter proposed a rate calculated to produce 180% revenue cost ratio for NSC and was sent to NSC on May 4, requesting a response by May 11.

The NSC responded on May 11 with the letter shown in Attachment D. The absence of a workable response to the May 4 BP letter brings the parties to a point of impasse. To resolve this impasse Snavely King recommended STB mediation.

Snavely King performed cost analyses of BP's former contract rate, the NS proposed --% rate increase, and the apparently proposed tariff rate for BP's PX Decatur-Kingsport Shipments. We conclude that each of these rates is unreasonably high.

We costed the Decatur-Kingsport lane using parameters reflecting BP's Paraxylene (PX) rail shipments. The car type is a tank car loaded at 82 tons. The lane was routed as NS direct with a distance of 335.6 miles. The empty/loaded ratio was set at 2.0246. For costing, STCC 28151 was used as the commodity code for Paraxylene.

The former contract rate for the Decatur-NS-Kingsport lane is \$---- per carload. The contract for this rate expired after April 30<sup>th</sup> 2005. NS proposed rate increases of --% or \$---- per carload in recent negotiations with BP. More recently, NS announced in its May 11 letter to BP that a tariff rate would apply effective May 1, 2005. BP inquiries with NSC on May 17 indicate that the tariff rate was \$---- per carload.

Table II reports SK analytical results on the former contract rate, the proposed --% rate increases, and the tariff rate under both single carload shipment and multiple carload shipment operations.<sup>3</sup> The revenue cost ratios (RCR) on these moves range from ---% for former contract rate and single carload shipment to ---% for the tariff rate and multiple carload shipment<sup>4</sup>.

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<sup>3</sup> The multiple carload shipments are costed by applying standard Ex Parte 270 (Sub No. 4) Adjustments.

<sup>4</sup> The URCS output of the single and multiple car movement is included in Attachment A and Attachment B of this document.

BP currently ships 4-6 cars per day to its customer in Kingsport, but if the customer renews the contract additional volume may be added. SK ran URCS cost analyses for a single car movement at 4 carloads per day. SK also ran URCS multiple car cost analyses at 8 carloads per shipment under the assumption that the carloads per move may double upon contract renewal.

The Revenue Cost Ratio (RCR) or Revenue-Variable Cost (R/VC) results are summarized below.

<b>Table II. Analysis Of Existing Rates And Potential Rate Increases For BP's PX Decatur-Kingsport Lane</b>				
<b>Description</b>	<b>Rate</b>	<b>URCS Cost Per Car</b>	<b>SK Adjusted Cost 1/</b>	<b>Revenue Cost Ratio<sup>5</sup> (RCR)</b>
<b>Analysis of Former Contract Rates in Effect Through April 30, 2005</b>				
Single Car	\$ -----	\$ -----	\$ -----	----%
Multiple Cars (8 Cars)	\$ -----	\$ -----	\$ -----	----%
<b>Analysis of Rates Proposed by NSC In negotiations since April 30, 2005</b>				
---% Rate Increase, Single Car	\$ -----	\$ -----	\$ -----	---%
---% Rate Increase, Multiple Car	\$ -----	\$ -----	\$ -----	---%
<b>Analysis of Tariff Rates in Effect Since April 30, 2005<sup>6</sup></b>				
---% Rate Increase, Single Car	\$ -----	\$ -----	\$ -----	---%
---% Rate Increase, Multiple Car	\$ -----	\$ -----	\$ -----	---%
1/ SK Adjusted costs reflect removal of trace elements of car costs since BP uses only shipper-owned tank cars in this lane				

In conducting our analyses SK also examined the small shipment lane in light of the benchmarks published by the STB in its Ex Parte 347 (Sub No. 2) Proceeding. We find the rates on the Decatur to Kingsport lane to be unreasonably high in terms of these additional tests, which SK recommends.

The Decatur, Alabama to Kingsport, TN lane meets the STB simplified guidelines based on three STB revenue-to-variable cost (R/VC or RCR) and Revenue Shortfall Allocation Method (RSAM). These benchmarks serve as starting points for a case-by-case reasonableness analysis. Concurrently with this petition, SK

<sup>5</sup> Revenue Cost Ratio (RCR) and Revenue-Variable Cost (R/VC) are used interchangeably to denote the revenue paid to the railroad for transporting a shipment divided by the variable cost incurred by the railroad in transporting that shipment.

<sup>6</sup> We are unsure as to whether NS actually proposes a rate increase of ---%; more than -- times greater than their most recent rate increase offer of --%

has requested access to the most recent STB data specifying these RCR and RSAM parameters and the underlying 2003 STB Waybill Sample.

The STB RSAM benchmark reflects the carrier's particular revenue needs by examining the average markup that the carrier might charge its potentially captive traffic to meet those needs. The 2002 NS RSAM markups ranged from 179% to 216%. The average 1999-2002 NS RSAM markup ranged from 191% to 238%.<sup>7</sup> The RCR on the BP's Decatur to Kingsport lane is well above both the 2002 NS RSAM and the 1999-2002 Average NS RSAM.

The STB Revenue Variable Cost Actual Average Mark Up Percentage (RCR>180) benchmark reflects the carrier's actual average markup that the carrier charges on traffic with RCR above 180%. The R/VC>180 benchmark tests whether the traffic at issue bears a disproportionate share of the carrier's revenues by examining the markups applied by the carrier to its other potentially captive traffic.

The 2002 NS RCR>180 markup was 221%. The average 1999-2002 NS RCR>180 markup was 212%. The RCR on the Decatur to Kingsport lane is well above both the 2002 NS RCR>180 benchmark and the 1999-2002 NS Average RCR>180 benchmark.

The STB also may use a Revenue Variable Cost Mark Up Percentage on comparable traffic (R/VC comp or RCR comp). The RCR comp benchmark reflects demand-based differential pricing principles (by measuring the markups applied to similar traffic). This benchmark reflects the defendant carrier's actual average markup that the carrier charges on traffic similar to the issue traffic. In this case that would be chemical traffic similar to the issue traffic with transportation characteristics similar to the issue traffic. SK has requested access to the costed STB waybill sample to test and validate this benchmark.

On this lane BP does not have access to effective transportation competition. BP's Decatur facility is closed to CSX for rail freight. SK has concluded that there is no effective truck or rail competition for the traffic on BP's Decatur to Kingsport Lane, based on interviews with BP managers. Those interviews focused on:

- Investment in loading and unloading facilities to handle truck traffic

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<sup>7</sup> 2003 STB RSAM and RCR>180 data is expected to be available later in 2005. In the meantime our analyses are based on the 1999 to 2002 STB RCR data. SK reserves the option of revising its evidence when the STB releases or makes available the 2003 Benchmark data.

- ☐ Customer preference<sup>8</sup>
- ☐ Investment in site logistics capabilities, the additional investment required to operate a truck loading facility safely<sup>9</sup>
- ☐ Difficulties associated with permitting and
- ☐ Other impediments to competitive transportation.

### III. The Role of the Surface Transportation Board

Occasionally, SK encounters impasses during the course of rail negotiations. We see a mutually beneficial role for STB mediation in resolving rate reasonableness issues related to such impasses. Despite repeated efforts to negotiate a solution, the Decatur to Kingsport lane has reached an impasse.

We see STB mediation as a means of facilitating an agreement designed to protect and advance the interests of both parties. Involvement of the Surface Transportation Board as a mediator can help establish processes that can transform conflict resolution into productive teamwork and convert friction into momentum.

We note that the relevant regulations and statutes focus on small shipments, not small shippers. This focus is well advised. In captive situations, where effective transportation competition is unavailable, we have found little difference between small shippers and others. Regardless of the size of the company, the captive shipper will generally pay rates much higher than when effective transportation competition is available for the same or similar commodity.

The STB recognizes that "...one of the main reasons the Board exists is to provide a regulatory backstop to assess the reasonableness of rates charged to captive shippers when those customers and their railroads are unable to successfully negotiate a contract for the transportation and to redress unreasonable rates."<sup>10</sup>

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<sup>8</sup> Customer preference is a different and often a more powerful factor than the investment for truck loading and unloading. The BP customer for PX would simply refuse to unload the number of trucks necessary to handle the rail volumes.

<sup>9</sup> The Decatur facility would require significant investment to ensure that the quantity of trucks required to handle rail volumes could move through the plant efficiently and safely.

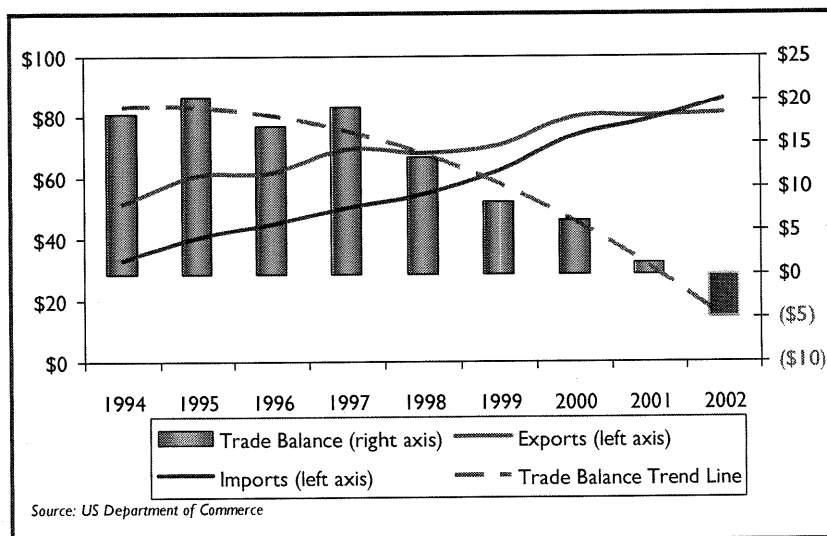
<sup>10</sup> Testimony of the Honorable Roger Nober, Chairman of the Surface Transportation Board, at House Committee Transportation and Infrastructure Subcommittee on Railroads Hearing on the Status of Railroad Economic Regulation; March 31, 2004

The Surface Transportation Board (STB) approach in the Coal Rate Guidelines, the Non-Coal Rate Guidelines, and techniques proven in negotiations can be key components of the STB's provision of fair and even-handed mediation of the rate discussions.

Implementing the "win-win" concept helps both NSC and BP achieve reasonable objectives, a strategy both railroad and shipper can endorse, support and apply. The objective is to use a "win-win" approach to produce more reasonable railroad rates, creating benefits for both railroads and shippers.

Resolving impasse situations such as the one that has developed on the Decatur to Kingsport lane benefits both shippers and railroads since such rates present adverse outcomes for all involved parties; railroads, shippers and their mutual customers. If such impasses are not resolved, compound adverse effects can occur.

For example, as reflected in the following graph, overseas sourcing of chemicals production has occurred increasingly in recent years. Some of the chemical production formerly based in the United States, and now produced overseas, is also consumed in overseas locations and no longer generates high revenue rail transportation in the US.



If portions of that production return to the United States the rail transportation is much more likely to be lower rated Intermodal freight rather than high rated Rail carload freight. The STB waybill sample data shows the markedly lower rates of intermodal rail freight.

We see mediation as most effective when it is both voluntary and binding. While we do not recommend foregoing all avenues of appeal, we suggest that both parties undertake a good faith effort to find a solution through mediation. We urge NSC to join BP in requesting and using STB mediation to resolve the negotiations impasse on the Decatur lane.

#### IV. SK Experience with Rail Rates and Reasonableness

In this section we review some of the data, including evidence from our own experience,<sup>11</sup> showing that impasse in rate negotiations is an important issue warranting remedial action by the STB.

We see evidence that negotiation situations with conditions leading to impasse are not unusual:

- SK analyses of rail freight of dozens of companies show numerous situations where rail-to-rail competition has disappeared. The lack of rail-to-rail competition generally makes reasonable rates more difficult to attain. This occurs regardless of the size of the shipper.
- We frequently see high RCR's on lanes regardless of the size of the shipment volume
- As shown in the following chart, STB's own waybill sample results show persistently high RCR's for chemicals and coal in contrast with the average for all rail commodities.

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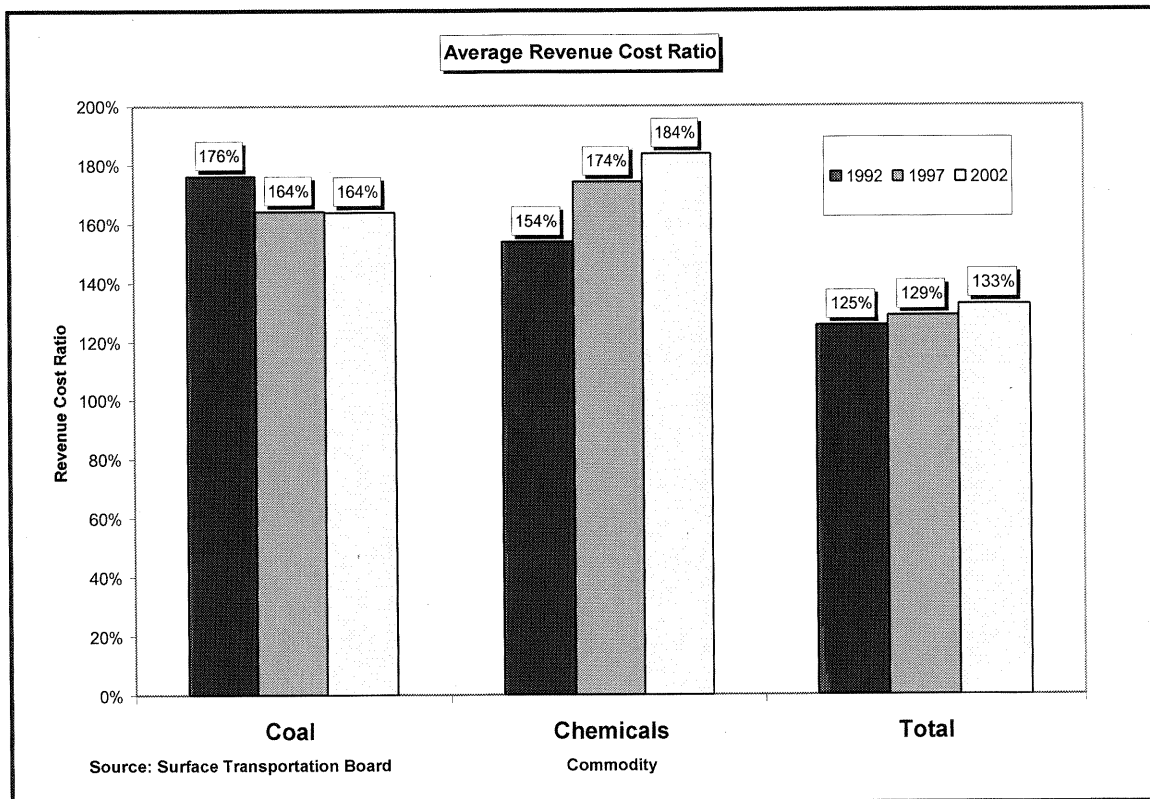
<sup>11</sup> My experience includes serving as AVP Economics of the Association of American Railroads (AAR), as part of the railroad team that helped design and install rail deregulation beginning in 1980. Our approach in this petition highlights the importance of the three Long Cannon Factors, an essential part of the design for rail deregulation. The ICC and its successor agency the STB were charged with protecting individual captive shippers from unreasonably high and unfair rate levels. The STB is also directed to ensure that carriers have the opportunity to earn revenues that are adequate to cover costs, allow replacement of needed assets, and provide a fair return on investment. In doing so, the STB was specifically directed to consider three so-called Long-Cannon factors, set forth in 49 U.S.C. 10701(d)(2). These factors are:

**Long-Cannon- 1;** the amount of traffic transported at revenues which do not contribute to going concern value and the efforts made to minimize such traffic

**Long-Cannon- 2** the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

**Long-Cannon- 3** the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.





In contrast to coal and chemicals, STB waybill sample results show persistently low RCR's for food products and other commodities, which have better access to transportation alternatives if rail competition is diminished or lost.

The chart also shows the average RCR for all rail freight, as measured by the STB, is consistently well below chemicals and coal. Moreover, in recent years the RCR for coal has declined, while the RCR for chemicals has increased.

## V. Small Shipment Parameters

For many shippers, the costs of developing and presenting a stand alone cost case are uneconomic given the traffic volume at issue<sup>12</sup>. For a small shipment lane like the Decatur to Kingsport lane, this is the case. Nevertheless, the small volumes are important to the shipper and also to the railroad, and to their mutual customers. Negotiations facilitated by STB mediation can produce benefits for the railroad, the shipper and their mutual customers.

Regarding applicability of the Non-Coal Rate Guidelines, in our practice we often encounter a situation in which large shippers have lanes with low shipment volumes, lack of effective rail or other transportation competition and high Revenue Cost Ratios. Such lanes need the recommended small shipment rate case mediation procedures. The Decatur lane illustrates the inability of a large shipper to extract itself from the commercial constraints of rail captivity.

Any resulting rail revenue reductions on such lanes would likely be offset in whole or in part by additional revenue as shippers regain confidence in rail. The negotiations impasse on the Decatur lane has challenged a long-standing commercial relationship between NSC and BP. BP seeks the assistance of the STB in resolving this impasse. The availability of access to STB mediation, such as we recommend and request, could enhance rail revenue adequacy by leading to net gains in profitable rail traffic.

Some railroad representatives have expressed concern that Small Shipment Rate Cases would become widespread and circumvent the SAC procedures.<sup>13</sup> We see little danger of this outcome. The record is clear that SAC is not even considered for use by most shippers.

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<sup>12</sup> The STB's Stand Alone Cost (SAC) methodology is widely perceived as providing limited assistance in resolving rate reasonableness issues for coal and grain shipments. SAC provides no assistance in resolving rate reasonableness issues for the vast majority of other rail shipments, including the small shipments on this lane. The STB's SAC test seeks to determine the lowest cost at which a hypothetical, efficient, "stand-alone railroad" ("SARR") could provide the transportation service needed by a shipper. Under the SAC test, the shipper designs a hypothetical railroad specifically tailored to serve its needs and the needs of other traffic it designates. The costs of building and operating such an efficient SARR are then compared to the revenues that such a system could expect to earn. If the involved shipper demonstrates that the SARR would earn more than necessary to cover all of its costs (including a reasonable return on investment), the shipper is entitled to rate relief. Such SAC cases can cost more than \$3 million to present.

<sup>13</sup> For example, see railroad comments during the Ex Parte 646 hearings in July 2004.

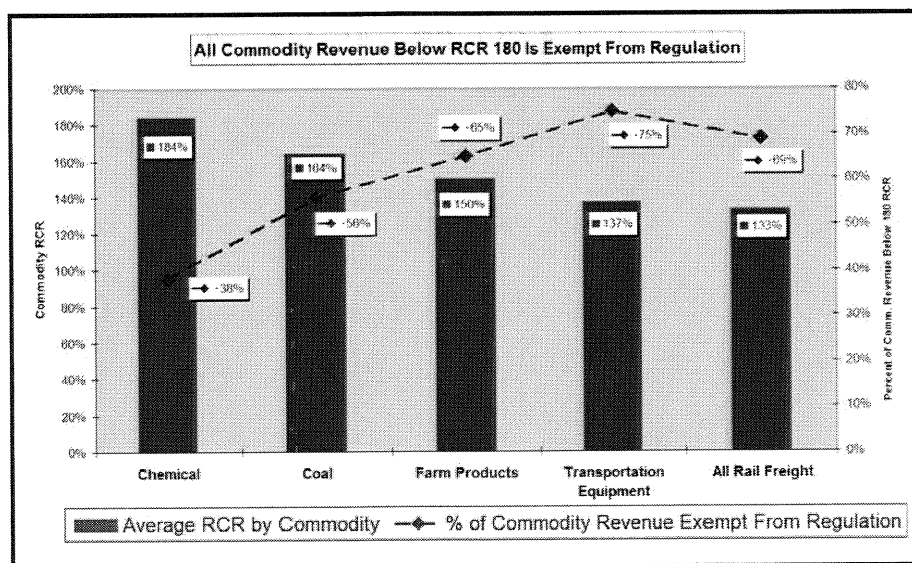
Moreover, although we find high RCR's frequently on small shipments, other factors will eliminate most of that traffic from consideration for the small shipment rate case procedures. This is a well understood and long-standing situation. For example, the ICC concluded in 1995 that only about 18 percent of rail revenue was subject to rate challenges under its jurisdiction.<sup>14</sup> More recently the STB estimated the number of shippers who might use SAC as 75 or less.

In focusing on the small shipment lanes most in need of mediation assistance we incorporate profitability metrics computed by the STB as criteria.

□ 180% RCR. This criterion eliminates all traffic with an RCR of less than 180%. This eliminates the following percentages of commodity groups based on STB 2002 waybill sample results:

- Chemicals: 38% of freight is eliminated from consideration
- Coal: 56% of freight is eliminated from consideration
- Farm products: 65% of freight is eliminated from consideration
- Transportation Equipment: 75% of freight is eliminated from consideration
- All Railroad Freight: 69% of freight is eliminated from consideration

As the following graph clearly shows, most rail freight would not qualify for small shipment rate reasonableness assistance from the STB.



<sup>14</sup> Data from ICC 1995 Notice of Proposed Rulemaking, as cited in April 2003 filing by US DOT in Ex Parte 646.

□ Revenue Shortfall Allocation Method (RSAM) with efficiency adjustment. Using the 1999 to 2002 4-year average RSAM as a rate reasonableness criterion, depending on the railroad at issue, would eliminate all traffic with an RCR of less than 191%, as shown in Table III. We see no merit in using the RSAM without an efficiency adjustment. That would ignore the Long-Cannon Factors designed to ensure an equitable process.

**Table III**  
**RSAM Mark-up Percentages 1999 - 2002**  
**(Range Represents RSAM With & Without Efficiency Adjustment)**

<b>Railroad/ Region</b>	<b>4 - Year Average</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>
<b>BNSF</b>	235-316	273-366	258-354	222-296	185-248
<b>GTC</b>		415-497			
<b>KCS</b>	281-340	266-310	302-364	275-339	280-345
<b>SOO</b>	316-407	237-260	328-441	298-361	399-565
<b>NS</b>	191-238	179-216	186-235	208-272	191-227
<b>CSX</b>	222-263	223-259	242-290	217-259	205-245
<b>UP</b>	224-311	196-255	213-299	254-369	231-322
<b>Eastern Region</b>		215-254			
<b>Western Region</b>	229-316	224-297	233-326	243-341	217-298
<b>National</b>		221-280			

Verified Statement of Tom O'Connor

□ RCR > 180. Using as a rate reasonableness criterion the 4-year average RCR data on traffic with RCR or R/VC greater than 180% as computed by the STB, depending on the railroad at issue, would eliminate all traffic with RCR below a point ranging from 263% to about 200%, as shown in Table IV.

**Table IV**  
**R/VC > 180 Percentages 1999-2002**  
**Actual Average Mark-up Percentages for Traffic Above 180% R/VC**

<b>Railroad/ Region</b>	<b>4 - Year Average</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>
<b>BNSF</b>	263	258	266	266	263
<b>GTC</b>		228			
<b>KCS</b>	248	238	263	242	248
<b>SOO</b>	234	205	256	228	246
<b>NS</b>	212	221	219	200	206
<b>CSX</b>	200	207	192	191	210
<b>UP</b>	232	236	234	222	234
<b>Eastern Region</b>		214			
<b>Western Region</b>	246	247	249	242	247
<b>National</b>		234			

**V. Findings, Conclusions and Recommendations**

- **SK finds BP's Decatur to Kingsport rates produce RCR's well above the regulatory threshold and also well above the NS RCR and RSAM benchmarks as computed by the STB.**
- **SK concludes that the Decatur lane NS rates that we analyzed are unreasonably high.**
- **SK recommends STB mediation to resolve the impasse in negotiations and facilitate agreement on reasonable rate levels.**
- **If such mediation is unsuccessful, SK recommends that BP request STB prescription of a reasonable rate for the Decatur lane.**

In general, while individual shipment and lane RCR's often range to quite high levels, we see relatively limited application for the recommended small shipment rate case procedures. Comparison of the RCR benchmarks and the STB average RCR confirms that the application of the recommended procedures would be quite limited. Simply stated, most of the traffic has RCR's below the STB RCR or RSAM benchmarks, or is otherwise ineligible for access to rate reasonableness review. Accordingly, we see limited impact of small shipment rate cases on rail revenue and no diminishment in rail revenue adequacy.

Our recommended approach relies in the first instance on private negotiations and would turn to the STB for mediation only in the event of impasse in such negotiations. BP has diligently pursued a negotiated solution in discussions over many months with NSC.

SK has observed, in years of advising on rail negotiations, that impasses can result from a variety of causes. Among the most prominent of these causes is the unavailability of effective transportation alternatives. One of the STB criteria for access to regulatory rate reasonableness review, lack of effective transportation competition, coincides with the realities of the marketplace. The Decatur lane is captive to rail and captive to NSC. Captivity often coincides with higher rail rates and the STB RCR and RSAM benchmarks show that the NSC rail rates are unreasonably high.

BP recognizes and supports the railroad industry's efforts to achieve greater efficiency. Provision of steady volumes of relatively easily handled shipments moving consistently over predictable route patterns is one of the bases on which the rail industry builds such efficiency.

□ BP has primarily relied on, and prefers, commercial negotiations in the transportation marketplace. BP has also diligently sought alternative transportation. For this lane, effective transportation alternatives are not available in either truck or rail. Both BP and Norfolk Southern have engaged in a sustained effort to reach agreement through commercial negotiations. Those negotiations have now come to an impasse.

□ BP now brings this impasse to the STB and requests its assistance in mediating the process of achieving reasonable rates. Such mediation would be voluntarily agreed to by the parties and would be binding. BP urges NSC to join with this request for mediation.

□ BP has met the conditions that demonstrate that the rail shipper is eligible to pursue Surface Transportation Board Rate Reasonableness Relief for the traffic at issue under the STB regulations.

□ BP has shown, based on RSAM and Revenue Cost Ratio (RCR) benchmarks, that the rail rates at issue would likely be found as excessive using the parameters computed by the STB in its small shipment non-coal guidelines.

Accordingly we recommend this synthesized alternative: a negotiated solution based on the STB small shipment guidelines noted in this petition, as mediated by the STB, to be followed by a rate reasonableness prescription by the STB only if the mediated negotiations fail to reach a reasonable resolution.

Respectfully submitted,



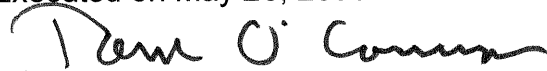
Tom O'Connor  
Vice President  
Snavely King Majoros O'Connor & Lee, Inc  
1220 L St NW  
Washington, DC 20036

Verified Statement of Tom O'Connor

**VI. VERIFICATION**

I, Tom O'Connor, declare that the foregoing statement is true and correct and was prepared by me or at my direction. Further, I certify that I am qualified and authorized to file this statement.

Executed on May 20, 2005.



Tom O'Connor

Subscribed and sworn to before me this 20th day of May 2005 in the District of Columbia.



Notary Public

My Commission expires: March 14, 2006



## Attachment A

BP Decatur - NS - Kingsport, Single Car, Tank

URCS PHASE III  
COVER PAGETYPE OF FREIGHT CAR: TANK, MORE THAN 22,000 GALLONS  
OF SHIPMENT (TONS): 82

NUMBER OF FREIGHT CARS: 1      WEIGHT

COMMODITY NAME: SYN FIBRES/RESINS/RUBBER

## DESCRIPTION OF SHIPMENT:

\*\*\*\*\*TRAIN MILES INCLUDING EMPTY RETURN\*\*\*\*\*

CARRIER THROUGH	CAR OWNER TOTAL	MOVEMENT	SHORT LINE	CIRCUITY	E/L RATIO	UNIT	WAY		
NS	PRIVATE	OT	336.0	1.000	2.025	0.0	62.9	617.3	680.3
TOTAL				0.0	62.9	617.3	680.3		

## UNIT COST AND OPERATING STATISTICS FILES

CARRIER IDENTIFICATION

INPUT FILE NAME

NS      Norfolk Southern

C:\URCS\URCSDATA\URCSNS.Y03

## SUMMARY OF ADJUSTED COSTS

CARRIER	VARIABLE	LOSS AND DAMAGE	TOTAL VARIABLE
NS			
TOTAL			

TOTAL VARIABLE SHIPMENT COST (DOLLARS): 0.3751      PER HUNDREDWEIGHT (DOLLARS):

FTABLE VERSION 2.1

03-21-2005

NOTE: INDEXED REFERENCES TO WORKTABLE E ARE USED FOR CAR TYPE, CIRCUITY, EMPTY/LOADED RATIO AND COMMODITY TYPE:

#1 - CAR TYPE IS LINE 116 IN E2 PART 1.

#2 - CARRIER NUMBER 1 CIRCUITY FACTOR WAS ADJUSTED TO REFLECT ACTUAL MILE CALCULATIONS. SEE FOOTNOTE &lt;G&gt;.

#3 - CARRIER NUMBER 1 EMPTY/LOADED RATIO USES LINE 116 IN E2 PART 1 COLUMN NUMBER 3. SEE FOOTNOTE &lt;G&gt;.

#4 - CAR TYPE IS LINE 216 IN E1 PART 2.

#5 - COMMODITY TYPE IS LINE NUMBER 343 IN E1 PART 3. (IF 300, COMMODITY LOSS AND DAMAGE IS ZERO).

#6 - LOSS AND DAMAGE SEGMENT SHARES ARE WEIGHTED BY LOADED TRAIN MILES

NOTE: FOOTNOTES ARE PRINTED AT THE BEGINNING OF THE CALCULATIONS AND ARE REFERENCED BY ANGLE BRACKETS &lt;&gt;.

FOOTNOTES BEGINNING WITH A LETTER (A-Z) ARE GENERAL NOTES NOT REFERENCED IN THE CALCULATIONS.

## Attachment B

BP Decatur – NS – Kingsport, Multiple Cars (8), Tank Car

URCS PHASE III  
COVER PAGETYPE OF FREIGHT CAR: TANK, MORE THAN 22,000 GALLONS  
OF SHIPMENT (TONS): 656

NUMBER OF FREIGHT CARS: 8 WEIGHT

COMMODITY NAME: SYN FIBRES/RESINS/RUBBER

## DESCRIPTION OF SHIPMENT:

\*\*\*\*\*TRAIN MILES INCLUDING EMPTY RETURN\*\*\*\*\*

CARRIER THROUGH	CAR OWNER TOTAL	MOVEMENT	SHORT LINE	CIRCUITY	E/L RATIO	UNIT	WAY		
NS	PRIVATE	OT	336.0	1.000	2.025	0.0	62.9	617.3	680.3
TOTAL				0.0	62.9	617.3	680.3		

## UNIT COST AND OPERATING STATISTICS FILES

CARRIER IDENTIFICATION

INPUT FILE NAME

NS Norfolk Southern

C:\URCS\URCSDATA\URCSNS.Y03

## SUMMARY OF ADJUSTED COSTS

CARRIER	VARIABLE	LOSS AND DAMAGE	TOTAL VARIABLE
NS			
TOTAL			

TOTAL VARIABLE SHIPMENT COST (DOLLARS): 0.3426 PER HUNDREDWEIGHT (DOLLARS):

FTABLE VERSION 2.1

03-21-2005

NOTE: INDEXED REFERENCES TO WORKTABLE E ARE USED FOR CAR TYPE, CIRCUITY, EMPTY/LOADED RATIO AND COMMODITY TYPE:

#1 - CAR TYPE IS LINE 116 IN E2 PART 1.

#2 - CARRIER NUMBER 1 CIRCUITY FACTOR WAS ADJUSTED TO REFLECT ACTUAL MILE CALCULATIONS. SEE FOOTNOTE &lt;G&gt;.

#3 - CARRIER NUMBER 1 EMPTY/LOADED RATIO USES LINE 116 IN E2 PART 1 COLUMN NUMBER 3. SEE FOOTNOTE &lt;G&gt;.

#4 - CAR TYPE IS LINE 216 IN E1 PART 2.

#5 - COMMODITY TYPE IS LINE NUMBER 343 IN E1 PART 3. (IF 300, COMMODITY LOSS AND DAMAGE IS ZERO).

#6 - LOSS AND DAMAGE SEGMENT SHARES ARE WEIGHTED BY LOADED TRAIN MILES

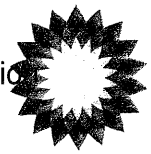
NOTE: FOOTNOTES ARE PRINTED AT THE BEGINNING OF THE CALCULATIONS AND ARE REFERENCED BY ANGLE BRACKETS &lt;&gt;.

FOOTNOTES BEGINNING WITH A LETTER (A-Z) ARE GENERAL NOTES NOT REFERENCED IN THE CALCULATIONS.

## Attachment C



Public Version



May 4, 2005

Mail Code 605-2W  
150 W. Warrenville Road  
Naperville, IL 60563-8460

Delivered via Facsimile and Overnight Courier

Mr. Donald W. Seale  
Executive Vice President  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-9206

Notice of Rate Counterproposal

Dear Don,

It was a pleasure meeting you, David Lawson and Joe Osborne at Norfolk Southern's headquarters on January 18, 2005.

It was important for me to come see you personally to discuss what is happening in our business, and more importantly express our concerns over the unfair and unreasonable rail freight rates we suffer on our captive routes. Our concerns then and now remain the same; without cost competitive supply chains, our ability to maintain and grow our chemical business in this country is in jeopardy.

As we stated in January, I believe BP is fundamentally a different customer now than it was one year ago. We have invested tremendous amounts of time, money and energy into educating ourselves on the costs and pricing of the US rail industry. We have retained expert advisers, economists and attorneys to teach us how railroads price their product and segment their customers. We have put significant effort into understanding the Surface Transportation Board, the role it plays and the rights BP has as a rail shipper. Given the robust and quantifiable benchmarking we have done on rail pricing, the simple conclusion that BP has reached is that the rates we pay for rail freight on captive routes are neither fair nor reasonable. We have to address this problem.

On March 30<sup>th</sup>, BP hosted a session with the NS to share in an open and honest manner what we have learned and what our concerns are. Despite this open dialogue, and much to our disappointment, the first instance for a rail rate negotiation, on our move of Paraxylene from Decatur, Alabama to Kingsport, Tennessee, has led to an NS proposal which is completely unacceptable. Our expectations were for the NS to address positively the concerns and frustration we have articulated over the past four months. To be clear, we seek to *reduce* our rail freight rates from their current unfair and unreasonable levels.

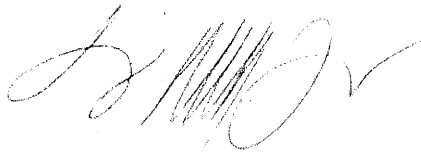
We are at an important juncture in this process, we have before us an opportunity to address the inequity of the rail freight rate NS charges us for this Decatur-to-Kingsport move. We believe a fair and reasonable rate for this lane is ~~100~~ per railcar. Furthermore, we believe this rate should remain in effect for seven years, could include an escalation component and an incentive feature for service excellence.

Attachment C

Don, I believe we have exhausted our efforts to reach an equitable negotiated conclusion to the rate for the Decatur-to-Kingsport lane. I request you to intervene personally to help us reach a fair and reasonable outcome to this matter. I would appreciate your response to our counter proposal by 4 pm on Wednesday, May 11, 2005.

Let there be no doubt that the NS is an important and valuable supplier to BP which is why the gravity of this situation is so important to us both. Feel free to contact me at your convenience at (630) 420-3735.

Sincerely Yours,

A handwritten signature in dark ink, appearing to read 'Luis Sierra', with a stylized flourish at the end.

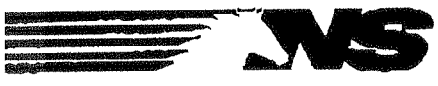
Luis Sierra  
Vice President  
PTA/NDC Americas

cc: Mr. David Lawson  
Mr. Joseph Osborne  
Mr. Jeffrey A. Foshee

## Attachment D



Public Version



Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-9206  
757 823-5358  
757 629-2366 FAX

David T. Lawson  
Vice President  
Industrial Products

May 11, 2005

**Via Facsimile and Overnight Mail**

Mr. Luis Sierra  
Vice President  
PTA/NDC Americas  
150 West Warrenville Road  
Naperville, IL 60563-8460

Dear Luis:

This is in response to your letter dated May 4, 2005, titled "Notice of Rate Counterproposal," which concerns the shipment of Paraxylene from the BP facility at Decatur, Alabama to Eastman Chemical at Kingsport, Tennessee. I am responding on behalf of Don Seale, who is out of the office until June.

We are frankly disappointed in your letter, both in its tone and in its implied threat of legal action. We believe that our two companies have conducted open and honest discussions concerning our respective needs, and the level of our relationship has allowed us to reach agreement to transport a wide range of BP's business under terms that reflect a mutually acceptable mix of risks and benefits. Your comments indicate this level of relationship is nearing an end.

While we have openly listened and discussed BP's concerns with rail pricing, you did not mention Norfolk Southern's expressed concerns to BP on numerous occasions, (including our March 30<sup>th</sup> meeting) regarding our need for rate levels that support a high service level and managing hazardous material risks in a rail transportation market that is capacity constrained.

As with all of our business with BP, we have negotiated in good faith and effort concerning the Paraxylene market from Decatur to Kingsport. Our offer of [REDACTED] per carload is more than fair and reasonable, and represented a significant discount from what we believe is a reasonable, market-based rate for this busy corridor. Our offer also included a refund incentive for additional volume that BP advised would be available, as a way to further improve the economics needed for BP. However, this rate is the minimum that can be offered with the capacity constraints we must address in our network, the need to secure the returns necessary to earn our cost of capital for reinvestment, and the risks associated with handling hazardous materials such as Paraxylene.

Public Version

Mr. Luis Sierra  
May 11, 2005  
Page 2

Since our offer is unacceptable to you, it is hereby withdrawn. Accordingly, our public tariff, along with its associated terms and conditions, became effective May 1, 2005.

If you have any questions or wish to discuss this any further, please feel free to give me a call.

In the meantime, we remain willing to work with BP on any traffic opportunities your company may have, under terms that are mutually acceptable.

Sincerely,



David Lawson  
Vice President  
Industrial Products

Cc: Don Seale  
Joe Osborne  
Jeff Foshee

Attachment D

\*\* TOTAL PAGE.03 \*\*

## Appendix A



Tom O'Connor is Vice-President of Snavely King Majoros O'Connor & Lee (Snavely King), an economic and management consulting company. He has been engaged in the business of economic analysis for years, beginning in 1973 as an economist with the Interstate Commerce Commission (now the Surface Transportation Board) and later in economic consulting and management positions of increasing responsibility with the United States Railway Association, Conrail, the Association of American Railroads and, from 1982 through 1988 with DNS, Associates and since 1988 with Snavely King Majoros O'Connor & Lee, (Snavely King), an economic and management consulting company focusing on telecommunications and transportation. Mr. O'Connor was Vice President and principal at DNS Associates and has been Vice President and principal of Snavely King since joining the firm in 1988.

He has provided testimony in a number of proceedings before courts and regulatory commissions in the United States and Canada including:

- Interstate Commerce Commission,
- Surface Transportation Board,
- United States Railway Association,
- Regulatory Commission in Indiana,
- Regulatory Commission in New York,
- Regulatory Commission in Pennsylvania,
- State Court in Montana,
- State Court in Virginia,
- Arbitration Panel in New York
- Mediation Panel in Massachusetts
- Canadian Crown Commission.
- US District Court for Eastern District of Virginia,
- US District Court for Arizona

Tom O'Connor's practice centers on transportation with specific focus on litigation, negotiations and infrastructure issues including rationalization and redesign of the railroad infrastructure in the US as well as rebuilding of the railway infrastructure in Eastern Europe.

Mr. O'Connor's work in Eastern Europe focused on both transportation and telecommunications.